



January 20, 2005

SENATE BILL No. 179

DIGEST OF SB 179 (Updated January 18, 2005 4:21 pm - DI 102)

Citations Affected: IC 3-13; IC 5-8; IC 20-3; IC 20-5.

Synopsis: Vacancies caused by death. Establishes a procedure to give notice of the death of an officeholder to begin the process of filling the vacancy in office. Changes the time limit for holding a meeting or caucus to fill a vacancy.

Effective: July 1, 2005.

Dillon, Steele

January 4, 2005, read first time and referred to Committee on Elections and Civic Affairs.
January 19, 2005, reported favorably — Do Pass.

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SB 179—LS 6309/DI 102+



January 20, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 179

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 3-13-4-3 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) **This section applies to a**
3 **vacancy that occurs** ~~other than by resignation~~, in a state office other
4 than governor, lieutenant governor, or a judicial office.

5 **(b) If a state officer wants to resign from office, the state officer**
6 **must resign as provided in IC 5-8-3.5.**

7 **(c) A vacancy that occurs in a state office because of the death**
8 **of the state officer may be certified to the governor under IC 5-8-6.**

9 **(d) A vacancy that occurs in a state office other than by**
10 **resignation or death** shall be certified to the governor by the circuit
11 court clerk of the county in which the officer resided.

12 ~~(b) (e) The governor shall fill a vacancy in a state office other than~~
13 ~~governor, lieutenant governor, or a judicial office shall be filled by~~
14 ~~appointment. by The governor may not fill a vacancy as provided by~~
15 **law until the governor receives notice of the death under IC 5-8-6.**

16 **(f) The person who is appointed by the governor** holds office for
17 the remainder of the unexpired term and until a successor is elected and

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1 qualified.

2 SECTION 2. IC 3-13-5-1 IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) A vacancy in a legislative
4 office shall be filled by a caucus comprised of the precinct
5 committeemen from the senate or house district where the vacancy
6 exists who represent the same political party that elected or selected the
7 person who held the vacated seat.

8 (b) Not later than thirty (30) days after the vacancy occurs (or as
9 provided in ~~subsection (c))~~, **subsections (c) and (d))**, the caucus shall
10 meet and select a person to fill the vacancy by a majority vote of those
11 casting a vote for a candidate, including vice committeemen eligible to
12 vote as a proxy under section 5 of this chapter.

13 (c) A state chairman may give notice of a caucus before the time
14 specified under subsection (b) if a vacancy will exist because the
15 official has:

- 16 (1) submitted a written resignation under IC 5-8-3.5 that has not
- 17 yet taken effect; or
- 18 (2) been elected to another office.

19 **(d) If a vacancy in a legislative office exists because of the death**
20 **of the legislator, the caucus shall meet and select a person to fill the**
21 **vacancy not later than thirty (30) days after the state chairman**
22 **receives notice of the death of the legislator from the secretary of**
23 **state under IC 5-8-6.**

24 ~~(d)~~ (e) Notwithstanding IC 5-8-4, a person may not withdraw the
25 person's resignation after the resignation has been accepted by the
26 person authorized to accept the resignation less than seventy-two (72)
27 hours before the announced starting time of the caucus under this
28 chapter.

29 ~~(e)~~ (f) The person selected must reside in the district where the
30 vacancy occurred.

31 SECTION 3. IC 3-13-5-2 IS AMENDED TO READ AS FOLLOWS
32 [EFFECTIVE JULY 1, 2005]: Sec. 2. **(a)** The state chairman of the
33 political party that elected or selected the person who held the vacated
34 seat shall set the place, date, and time of a caucus meeting. The
35 chairman shall send a notice, by first class mail, of the purpose, place,
36 date, and time of the meeting to all precinct committeemen in the
37 caucus at least ten (10) days before the meeting.

38 **(b) If a vacancy in a legislative office exists because of the death**
39 **of the legislator, the state chairman may not send the notice**
40 **required by subsection (a) until the state chairman receives notice**
41 **of the death from the secretary of state under IC 5-8-6.**

42 SECTION 4. IC 3-13-6-1 IS AMENDED TO READ AS FOLLOWS



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[EFFECTIVE JULY 1, 2005]: Sec. 1. (a) **As used in this section, "judge" refers to a judge of a circuit, superior, probate, or county court.**

(b) **If a judge wants to resign from office, the judge must resign as provided in IC 5-8-3.5.**

(c) **A vacancy that occurs because of the death of a judge may be certified to the governor under IC 5-8-6.**

~~(a)~~ (d) **A vacancy that occurs, other than by resignation in the office or death of a judge, of a circuit, superior, probate, or county court shall be certified to the governor by the circuit court clerk of the county in which the judge resided.**

~~(b)~~ (e) **A vacancy in the office of judge of a circuit court shall be filled by the governor as provided by Article 5, Section 18 of the Constitution of the State of Indiana. However, the governor may not fill a vacancy that occurs because of the death of a judge until the governor receives notice of the death under IC 5-8-6.** The person who is appointed holds the office until:

(1) the end of the unexpired term; or

(2) a successor is elected at the next general election and qualified;

whichever occurs first. The person elected at the general election following an appointment to fill the vacancy, upon being qualified, holds office for the six (6) year term prescribed by Article 7, Section 7 of the Constitution of the State of Indiana and until a successor is elected and qualified.

~~(c)~~ (f) **A vacancy in the office of judge of a superior, probate, or county court shall be filled by the governor subject to the following:**

(1) IC 33-33-2-39.

(2) IC 33-33-2-43.

(3) IC 33-33-45-38.

(4) IC 33-33-71-40.

However, the governor may not fill a vacancy that occurs because of the death of a judge until the governor receives notice of the death under IC 5-8-6. The person who is appointed holds office for the remainder of the unexpired term.

SECTION 5. IC 3-13-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) **This section applies to a vacancy in a county elected office (other than county council) not covered by section 1 of this chapter.**

(b) **A vacancy shall be filled by the board of commissioners of the county at a regular or special meeting. The county auditor shall give notice of the meeting, which Except as provided in subsection (d),**

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1 **the meeting** shall be held ~~within~~ **not later than** thirty (30) days after
 2 the vacancy occurs. The notice must:

- 3 (1) be in writing;
 4 (2) state the purpose of the meeting;
 5 (3) state the date, time, and place of the meeting; and
 6 (4) be sent by first class mail to each commissioner at least ten
 7 (10) days before the meeting.

8 ~~(b)~~ **(c)** Selections made under this section (or under IC 3-2-10-3(a)
 9 before its repeal on March 4, 1986) are appointments pro tempore for
 10 the purposes of Article 2, Section 11 of the Constitution of the State of
 11 Indiana.

12 **(d) If a vacancy occurs because of the death of an elected county**
 13 **officer, the board of commissioners shall meet and select an**
 14 **individual to fill the vacancy not later than thirty (30) days after**
 15 **the county auditor receives notice of the death under IC 5-8-6. The**
 16 **county auditor may not give the notice required under subsection**
 17 **(b) until the county auditor receives notice of the death under**
 18 **IC 5-8-6.**

19 SECTION 6. IC 3-13-7-3 IS AMENDED TO READ AS FOLLOWS
 20 [EFFECTIVE JULY 1, 2005]: Sec. 3. **(a) This section applies to a**
 21 **vacancy in a county council not covered by section 1 of this chapter.**

22 **(b) A vacancy** shall be filled by a majority of the remaining
 23 members of the council at a regular or special meeting. The county
 24 auditor shall give notice of the meeting. ~~which~~ **Except as provided in**
 25 **subsection (c), the meeting** shall be held ~~within~~ **not later than** thirty
 26 (30) days after the vacancy occurs. The notice must:

- 27 (1) be in writing;
 28 (2) state the purpose of the meeting;
 29 (3) state the date, time, and place of the meeting; and
 30 (4) be sent by first class mail to each council member at least ten
 31 (10) days before the meeting.

32 **(c) If a vacancy occurs because of the death of a county council**
 33 **member, the county council shall meet and select an individual to**
 34 **fill the vacancy not later than thirty (30) days after the county**
 35 **auditor receives notice of the death under IC 5-8-6. The county**
 36 **auditor may not give the notice required under subsection (b) until**
 37 **the county auditor receives notice of the death under IC 5-8-6.**

38 SECTION 7. IC 3-13-8-2 IS AMENDED TO READ AS FOLLOWS
 39 [EFFECTIVE JULY 1, 2005]: Sec. 2. **(a) As used in this section,**
 40 **"judge" refers to a judge of a city court.**

41 **(b) If a judge wishes to resign from office, the judge must resign**
 42 **as provided in IC 5-8-3.5.**

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1 **(c) A vacancy that occurs because of the death of a judge may**
 2 **be certified to the governor under IC 5-8-6.**

3 ~~(a) (d)~~ A vacancy that occurs, other than by resignation ~~in the office~~
 4 **or death of a judge, of a city court** shall be certified to the governor by
 5 the circuit court clerk of the county in which the judge resided.

6 ~~(b) (e)~~ A vacancy in the office of judge of a city court shall be filled
 7 by the governor. **However, the governor may not fill a vacancy that**
 8 **occurs because of the death of a judge until the governor receives**
 9 **notice of the death under IC 5-8-6.**

10 SECTION 8. IC 3-13-8-3 IS AMENDED TO READ AS FOLLOWS
 11 [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) **This section applies to a**
 12 vacancy in the office of mayor of a first class city not covered by
 13 section 1 of this chapter.

14 **(b) The vacancy** shall be filled by the city-county council at a
 15 regular or special meeting. The city clerk shall give notice of the
 16 meeting. ~~which~~ **Except as provided in subsection (d), the meeting**
 17 shall be held ~~within~~ **not later than** thirty (30) days after the vacancy
 18 occurs. The notice must:

- 19 (1) be in writing;
 20 (2) state the purpose of the meeting;
 21 (3) state the date, time, and place of the meeting; and
 22 (4) be sent by first class mail to each council member at least ten
 23 (10) days before the meeting.

24 ~~(b) (c)~~ The city clerk shall preside at the meeting but may not vote
 25 unless there is a tie vote among the members of the council. The
 26 council must appoint one (1) of its own members to the office. Until the
 27 vacancy is filled, the president of the council shall serve as acting
 28 mayor.

29 **(d) If a vacancy exists because of the death of the mayor, the**
 30 **council shall meet and select an individual to fill the vacancy not**
 31 **later than thirty (30) days after the city clerk receives notice of the**
 32 **death under IC 5-8-6. The city clerk may not give the notice**
 33 **required by subsection (b) until the city clerk receives notice of the**
 34 **death under IC 5-8-6.**

35 SECTION 9. IC 3-13-8-4 IS AMENDED TO READ AS FOLLOWS
 36 [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) **This section applies to a**
 37 vacancy in the city-county council of a first class city not covered by
 38 section 1 of this chapter.

39 **(b) A vacancy** shall be filled by a majority of the remaining
 40 members of the council at a regular or special meeting. The city clerk
 41 shall give notice of the meeting. ~~which~~ **Except as provided in**
 42 **subsection (c), the meeting** shall be held ~~within~~ **not later than** thirty

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(30) days after the vacancy occurs. The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

(c) If a vacancy exists because of the death of a council member, the council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the city clerk receives notice of the death under IC 5-8-6. The city clerk may not give the notice required by subsection (b) until the city clerk receives notice of the death under IC 5-8-6.

~~(b)~~ **(d)** The appointed member serves until a successor is elected and qualified at the next municipal or general election, whichever occurs first. The successor serves from noon January 1 following that election to noon January 1 following the next municipal election, as provided in IC 36-3-4-2. The persons appointed and elected must be resident voters in the district where the vacancy occurred, unless the vacancy occurred in an at large seat.

SECTION 10. IC 3-13-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) **This section applies to** a vacancy in the office of mayor of a second class city not covered by section 1 of this chapter.

(b) A vacancy shall be filled as follows:

- (1) If the city has a deputy mayor, the deputy mayor assumes the office for the remainder of the unexpired term.
- (2) If the city does not have a deputy mayor, the city controller assumes the office for the remainder of the unexpired term.
- (3) If the city does not have a deputy mayor and the office of city controller is vacant, the common council shall fill the vacancy at a regular or special meeting.

~~(b)~~ **(c)** The city clerk shall give notice of the meeting required under subsection ~~(a)(3)~~, **which (b)(3). Except as provided in subsection (d), the meeting shall be held within not later than thirty (30) days after the vacancy occurs. The notice must:**

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

(d) If a vacancy exists because of the death of the mayor, the council shall meet and select an individual to fill the vacancy not

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1 later than thirty (30) days after the city clerk receives notice of the
 2 death under IC 5-8-6. The city clerk may not give the notice
 3 required by subsection (c) until the city clerk receives notice of the
 4 death under IC 5-8-6.

5 ~~(c)~~ (e) Until the vacancy is filled, the council shall designate one (1)
 6 of its members to serve as acting mayor.

7 SECTION 11. IC 3-13-8-6 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) **This section**
 9 **applies to** a vacancy in the office of city clerk of a second class city not
 10 covered by section 1 of this chapter.

11 **(b) A vacancy** shall be filled by the mayor or acting mayor, subject
 12 to the approval of the common council. **However, if a vacancy exists**
 13 **because of the death of the city clerk, the mayor or acting mayor**
 14 **may not fill the vacancy until the mayor or acting mayor receives**
 15 **notice of the death under IC 5-8-6.**

16 ~~(b)~~ (c) The common council shall vote on the question of approving
 17 the mayor or acting mayor's appointment at a regular or special
 18 meeting. The president of the common council shall give notice of the
 19 meeting, which shall be held ~~within~~ **not later than** thirty (30) days
 20 after the appointment is made. The notice must:

- 21 (1) be in writing;
- 22 (2) state the purpose of the meeting;
- 23 (3) state the date, time, and place of the meeting; and
- 24 (4) be sent by first class mail to each council member at least ten
 25 (10) days before the meeting.

26 SECTION 12. IC 3-13-8-7 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) **This section**
 28 **applies to** a vacancy in the common council of a second class city not
 29 covered by section 1 of this chapter.

30 **(b) A vacancy** shall be filled by the remaining members of the
 31 council at a regular or special meeting. The city clerk shall give notice
 32 of the meeting. ~~which~~ **Except as provided in subsection (c), the**
 33 **meeting** shall be held ~~within~~ **not later than** thirty (30) days after the
 34 vacancy occurs. The notice must:

- 35 (1) be in writing;
- 36 (2) state the purpose of the meeting;
- 37 (3) state the date, time, and place of the meeting; and
- 38 (4) be sent by first class mail to each council member at least ten
 39 (10) days before the meeting.

40 **(c) If a vacancy exists because of the death of a council member,**
 41 **the council shall meet and select an individual to fill the vacancy**
 42 **not later than thirty (30) days after the city clerk receives notice of**

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1 the death under IC 5-8-6. The city clerk may not give the notice
2 required by subsection (b) until the city clerk receives notice of the
3 death under IC 5-8-6.

4 SECTION 13. IC 3-13-8-8 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) **This section**
6 **applies to** a vacancy in the office of mayor of a third class city not
7 covered by section 1 of this chapter.

8 **(b) A vacancy** shall be filled as follows:

9 (1) If the city has a deputy mayor, the deputy mayor assumes the
10 office for the remainder of the unexpired term.

11 (2) If the city does not have a deputy mayor, the common council
12 shall fill the vacancy at a regular or special meeting.

13 ~~(b)~~ **(c)** The city clerk-treasurer shall give notice of the meeting
14 required under subsection ~~(a)(2)~~, **which (b)(2). Except as provided in**
15 **subsection (d), the meeting** shall be held ~~within~~ **not later than** thirty
16 (30) days after the vacancy occurs. The notice must:

17 (1) be in writing;

18 (2) state the purpose of the meeting;

19 (3) state the date, time, and place of the meeting; and

20 (4) be sent by first class mail to each council member at least ten

21 (10) days before the meeting.

22 **(d) If a vacancy exists because of the death of the mayor, the**
23 **council shall meet and select an individual to fill the vacancy not**
24 **later than thirty (30) days after the city clerk-treasurer receives**
25 **notice of the death by IC 5-8-6. The city clerk-treasurer may not**
26 **give the notice required by subsection (c) until the city**
27 **clerk-treasurer receives notice of the death under IC 5-8-6.**

28 ~~(c)~~ **(e)** Until the vacancy is filled, the council shall designate one (1)
29 of its members to serve as acting mayor.

30 SECTION 14. IC 3-13-8-9 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) **This section**
32 **applies to** a vacancy in the office of city clerk-treasurer of a third class
33 city not covered by section 1 of this chapter.

34 **(b) The vacancy** shall be filled by the mayor or acting mayor,
35 subject to the approval of the common council. **However, if a vacancy**
36 **exists because of the death of the city clerk-treasurer, the mayor or**
37 **acting mayor may not fill the vacancy until the mayor or acting**
38 **mayor receives notice of the death under IC 5-8-6.**

39 ~~(b)~~ **(c)** The common council shall vote on the question of approving
40 the mayor or acting mayor's appointment at a regular or special
41 meeting. The mayor shall give notice of the meeting, which shall be
42 held ~~within~~ **not later than** thirty (30) days after the appointment is

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made. The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

SECTION 15. IC 3-13-8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) **This section applies to** a vacancy in the common council of a third class city not covered by section 1 of this chapter.

(b) **A vacancy** shall be filled by the remaining members of the council at a regular or special meeting. The city executive may break any tie vote.

~~(b)~~ (c) The city clerk-treasurer shall give notice of the meeting. ~~which~~ **Except as provided in subsection (d), the meeting** shall be held ~~within~~ **not later than** thirty (30) days after the vacancy occurs. The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

(d) **If a vacancy exists because of the death of a council member, the council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the city clerk-treasurer receives notice of the death under IC 5-8-6. The city clerk-treasurer may not give the notice required by subsection (c) until the city clerk-treasurer receives notice of the death under IC 5-8-6.**

SECTION 16. IC 3-13-9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) **This section applies to** a vacancy in the office of judge of a town court that is:

- (1) not covered by section 1 of this chapter; or
- (2) covered by section 1 of this chapter, but ~~exists~~ **existing** after the thirtieth day after the vacancy occurs.

(b) **A vacancy** shall be filled by the town council at a regular or special meeting.

~~(b)~~ (c) The town clerk-treasurer shall give notice of the meeting. ~~which~~ **Except as provided in subsections (e) and (f), the meeting** shall be held:

- (1) ~~within~~ **not later than** thirty (30) days after the vacancy occurs if the vacancy is not covered by section 1 of this chapter; or

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(2) ~~within~~ **not later than** sixty (60) days after the vacancy occurs if the vacancy **is covered by section 1 of this chapter** and exists for more than thirty (30) days.

~~(c)~~ **(d)** The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

(e) If a vacancy:

- (1) is not covered by section 1 of this chapter; and**
- (2) exists because of the death of a judge;**

the council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the town clerk-treasurer receives notice of the death under IC 5-8-6. The town clerk-treasurer may not give the notice required by subsection (c) until the town clerk-treasurer receives notice of the death under IC 5-8-6.

(f) If a vacancy:

- (1) is covered by section 1 of this chapter;**
- (2) exists because of the death of a judge; and**
- (3) exists for more than thirty (30) days;**

the council shall meet and select an individual to fill the vacancy not later than sixty (60) days after the town clerk-treasurer receives notice of the death under IC 5-8-6. The town clerk-treasurer may not give the notice required by subsection (c) until the town clerk-treasurer receives notice of the death under IC 5-8-6.

SECTION 17. IC 3-13-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) **This section applies to** a vacancy in the office of town clerk-treasurer:

- (1) not covered by section 1 of this chapter; or
- (2) covered by section 1 of this chapter, but existing after the thirtieth day after the vacancy occurs.

(b) A vacancy shall be filled by the town council at a regular or special meeting.

~~(b)~~ **(c)** The president of the town council shall give notice of the meeting. ~~which~~ **Except as provided in subsections (e) and (f), the meeting shall be held:**

- (1) ~~within~~ **not later than** thirty (30) days after the vacancy occurs if the vacancy is not covered by section 1 of this chapter; or
- (2) ~~within~~ **not later than** sixty (60) days after the vacancy occurs

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if the vacancy **is covered by section 1 of this chapter and** exists for more than thirty (30) days.

~~(c)~~ **(d)** The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

(e) If a vacancy:

(1) is not covered by section 1 of this chapter; and

(2) exists because of the death of the town clerk-treasurer;

the council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the president of the town council receives notice of the death under IC 5-8-6. The president of the town council may not give the notice required by subsection (c) until the president of the town council receives notice of the death under IC 5-8-6.

(f) If a vacancy:

(1) is covered by section 1 of this chapter;

(2) exists because of the death of the town clerk-treasurer; and

(3) exists for more than thirty (30) days;

the council shall meet and select an individual to fill the vacancy not later than sixty (60) days after the president of the town council receives notice of the death under IC 5-8-6. The president of the town council may not give the notice required by subsection (c) until the president of the town council receives notice of the death under IC 5-8-6.

SECTION 18. IC 3-13-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) **This section applies to** a vacancy in the town council:

- (1) not covered by section 1 of this chapter; or
- (2) covered by section 1 of this chapter, but existing after the thirtieth day after the vacancy occurs.

(b) The vacancy shall be filled by the remaining members of the council at a regular or special meeting.

~~(b)~~ **(c)** The town clerk-treasurer shall give notice of the meeting. Except as provided in ~~subsection (d)~~ **or subsections (e), (f), (g), and (h),** the meeting shall be held:

- (1) ~~within~~ **not later than** thirty (30) days after the vacancy occurs if the vacancy is not covered by section 1 of this chapter; or
- (2) ~~within~~ **not later than** sixty (60) days after the vacancy occurs

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if the vacancy is covered by section 1 of this chapter and exists for more than thirty (30) days.

~~(c)~~ **(d)** The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

~~(d)~~ **Notwithstanding subsection (b); (e)** If a vacancy:

- (1) is not covered by **subsection (f) or** section 1 of this chapter; and
- (2) exists because a circumstance has occurred under ~~IC 36-5-2-6.5(2)~~ through IC 36-5-2-6.5(3);

the town council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the town council determines that a circumstance has occurred under ~~IC 36-5-2-6.5(2)~~ through IC 36-5-2-6.5(3).

(f) If a vacancy:

- (1) is not covered by subsection (e) or section 1 of this chapter; and**
- (2) exists because a circumstance has occurred under IC 36-5-2-6.5(2);**

the town council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the town clerk-treasurer receives notice of the death under IC 5-8-6. The town clerk-treasurer may not give the notice required by subsection (c) until the town clerk-treasurer receives notice of the death under IC 5-8-6.

~~(e)~~ **Notwithstanding subsection (b); (g)** If a vacancy:

- (1) is covered by section 1 of this chapter **and not covered by subsection (h);**
- (2) exists because a circumstance has occurred under ~~IC 36-5-2-6.5(2)~~ through IC 36-5-2-6.5(3); and
- (3) exists for more than thirty (30) days;

the council shall meet and select an individual to fill the vacancy not later than sixty (60) days after the town council determines that a circumstance has occurred under ~~IC 36-5-2-6.5(2)~~ through IC 36-5-2-6.5(3).

(h) If a vacancy:

- (1) is covered by section 1 of this chapter and not covered by subsection (g);**
- (2) exists because a circumstance has occurred under**

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1 **IC 36-5-2-6.5(2); and**
 2 **(3) exists for more than thirty (30) days;**
 3 **the council shall meet and select an individual to fill the vacancy**
 4 **not later than sixty (60) days after the town clerk-treasurer**
 5 **receives notice of the death under IC 5-8-6. The town**
 6 **clerk-treasurer may not give the notice required by subsection (c)**
 7 **until the town clerk-treasurer receives notice of the death under**
 8 **IC 5-8-6.**

9 SECTION 19. IC 3-13-10-2 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) A vacancy in the
 11 office of township trustee:

12 (1) not covered by section 1 of this chapter; or
 13 (2) covered by section 1 of this chapter, but that exists after the
 14 thirtieth day after the vacancy occurs;
 15 shall be filled by the board of commissioners of the county at a regular
 16 or special meeting.

17 (b) The county auditor shall give notice of the meeting. ~~which~~
 18 (c) **Except as provided in subsections (e) and (f), the meeting**
 19 shall be held ~~within~~ **not later than:**

20 (1) thirty (30) days after the vacancy occurs, **if the vacancy is not**
 21 **covered by section 1 of this chapter; or**
 22 (2) **not later than sixty (60) days after the vacancy occurs, if**
 23 **the vacancy is covered by section 1 of this chapter and exists**
 24 **for more than thirty (30) days.**

25 (d) The notice must:
 26 (1) be in writing;
 27 (2) state the purpose of the meeting;
 28 (3) state the date, time, and place of the meeting; and
 29 (4) be sent by first class mail to each commissioner at least ten
 30 (10) days before the meeting.

31 (e) **If the vacancy:**
 32 (1) **is not covered by section 1 of this chapter; and**
 33 (2) **exists because of the death of the township trustee;**
 34 **the meeting required by subsection (c) shall be held not later than**
 35 **thirty (30) days after the county auditor receives notice of the**
 36 **death under IC 5-8-6. The county auditor may not give the notice**
 37 **required by subsection (b) until the county auditor receives notice**
 38 **of the death under IC 5-8-6.**

39 (f) **If the vacancy:**
 40 (1) **is covered by section 1 of this chapter;**
 41 (2) **exists because of the death of the township trustee; and**
 42 (3) **exists for more than thirty (30) days;**

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1 the meeting required under subsection (c) shall be held not later
 2 than sixty (60) days after the county auditor receives notice of the
 3 death under IC 5-8-6. The county auditor may not give the notice
 4 required by subsection (b) until the county auditor receives notice
 5 of the death under IC 5-8-6.

6 SECTION 20. IC 3-13-10-3 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) This section
 8 applies to a vacancy in the office of township assessor not covered by
 9 section 1 of this chapter.

10 (b) A vacancy shall be filled by the county assessor, subject to the
 11 approval of the department of local government finance. Except as
 12 provided in subsection (c), the county assessor shall make the
 13 appointment within not later than thirty (30) days after the vacancy
 14 occurs. If the vacancy occurred because the elected township assessor
 15 failed to qualify or was removed, the person who is appointed must be
 16 of the same political party as the elected township assessor.

17 (c) If a vacancy exists because of the death of the township
 18 assessor, the county assessor shall make the appointment required
 19 by subsection (b) not later than thirty (30) days after the county
 20 assessor receives notice of the death under IC 5-8-6. The county
 21 assessor may not fill the vacancy as required by subsection (b) until
 22 the county assessor receives notice of the death under IC 5-8-6.

23 SECTION 21. IC 3-13-10-4 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A vacancy on the
 25 township board of a township:

- 26 (1) not covered by section 1 of this chapter; or
 27 (2) covered by section 1 of this chapter, but that exists after the
 28 thirtieth day after the vacancy occurs;

29 shall be filled by the board of commissioners of the county at a regular
 30 or special meeting.

31 (b) The county auditor shall give notice of the meeting. which

32 (c) Except as provided in subsections (e) and (f), the meeting
 33 shall be held: within

- 34 (1) not later than thirty (30) days after the vacancy occurs, if the
 35 vacancy is not covered by section 1 of this chapter; or
 36 (2) not later than sixty (60) days after the vacancy occurs, if
 37 the vacancy is covered by section 1 of this chapter and exists
 38 for more than thirty (30) days.

39 (d) The notice must:

- 40 (1) be in writing;
 41 (2) state the purpose of the meeting;
 42 (3) state the date, time, and place of the meeting; and

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(4) be sent by first class mail to each commissioner at least ten (10) days before the meeting.

(e) If a vacancy:

(1) is not covered by section 1 of this chapter; and

(2) exists because of the death of a township board member; the meeting required by subsection (c) shall be held not later than thirty (30) days after the county auditor receives notice of the death under IC 5-8-6. The county auditor may not give the notice required under subsection (b) until the county auditor receives notice of the death under IC 5-8-6.

(f) If a vacancy:

(1) is covered by section 1 of this chapter;

(2) exists because of the death of a township board member; and

(3) exists for more than thirty (30) days;

the meeting required by subsection (c) shall be held not later than sixty (60) days after the county auditor receives notice of the death under IC 5-8-6. The county auditor may not give the notice required by subsection (b) until the county auditor receives notice of the death under IC 5-8-6.

SECTION 22. IC 3-13-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. **(a) This section applies to** a vacancy in the office of judge of a small claims court or small claims court constable not covered by section 1 of this chapter.

(b) A vacancy shall be filled by the township board at a regular or special meeting. The chairman of the township board shall give notice of the meeting. ~~which~~ **Except as provided in subsection (c), the meeting shall be held within not later than thirty (30) days after the vacancy occurs. The notice must:**

(1) be in writing;

(2) state the purpose of the meeting;

(3) state the date, time, and place of the meeting; and

(4) be sent by first class mail to each board member at least ten (10) days before the meeting.

(c) If a vacancy exists because of the death of a judicial officer, the meeting required by subsection (b) shall be held not later than thirty (30) days after the chairman of the township board receives notice of the death under IC 5-8-6. The chairman of the township board may not give the notice required by subsection (b) until the chairman of the township board receives notice of the death under IC 5-8-6.

SECTION 23. IC 3-13-11-3 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) Except as
 2 provided in ~~subsection~~ **subsections (b) and (e)** and section 3.5 of this
 3 chapter, not later than ten (10) days after a vacancy occurs in an office
 4 subject to this chapter, the county chairman:

5 (1) of the county in which the greatest percentage of the
 6 population of the election district of the office is located; and

7 (2) of the same political party that elected or selected the official
 8 who vacated the office;

9 shall give notice of a caucus to all eligible precinct committeemen.

10 (b) A county chairman may give notice of a caucus before the time
 11 specified under subsection (a) if a vacancy will exist because the
 12 official has:

13 (1) submitted a written resignation under IC 5-8-3.5; or

14 (2) been elected to another office.

15 (c) Notwithstanding IC 5-8-4, a person may not withdraw the
 16 person's resignation after the resignation has been accepted by the
 17 person authorized to accept the resignation less than seventy-two (72)
 18 hours before the announced starting time of a caucus under this section.

19 (d) Except as provided in **subsection (e) and** section 3.5 of this
 20 chapter, a caucus under this section shall be held after giving notice to
 21 caucus members under section 4 of this chapter and not later than thirty
 22 (30) days after the vacancy occurs.

23 **(e) If a vacancy exists in an office because a circumstance has**
 24 **occurred under IC 36-5-2-6.5(2), the caucus shall meet and select**
 25 **an individual to fill the vacancy not later than thirty (30) days after**
 26 **the county chairman receives notice of the death under IC 5-8-6.**
 27 **The county chairman shall give notice to caucus members under**
 28 **section 4 of this chapter. The county chairman may not give the**
 29 **notice required by section 4 of this chapter until the county**
 30 **chairman receives notice of the death under IC 5-8-6.**

31 SECTION 24. IC 3-13-11-3.5 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3.5. (a) If a vacancy
 33 exists on a town council because a circumstance has occurred under
 34 ~~IC 36-5-2-6.5(2)~~ through IC 36-5-2-6.5(3), the caucus shall meet and
 35 select an individual to fill the vacancy not later than thirty (30) days
 36 after the county chairman receives a notice of the vacancy under
 37 IC 5-8-5. If the vacancy is due to the death of a town council member
 38 and the county chairman is aware of the member's death before
 39 receiving a notice of the death, the caucus may meet before the county
 40 chairman receives the notice of the death.

41 (b) The county chairman shall:

42 (1) give notice of the caucus meeting to caucus members under

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section 4 of this chapter; and

(2) keep the notice of the vacancy with the records of the caucus.

SECTION 25. IC 5-8-5-1 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2005]: Sec. 1. This chapter applies when a
vacancy must be filled under:

(1) IC 3-13-9; or

(2) IC 3-13-11;

due to a reason set forth in ~~IC 36-5-2-6.5(2) through~~ IC 36-5-2-6.5(3).

SECTION 26. IC 5-8-5-3 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The town council may hold
a public meeting to determine whether a circumstance has occurred
under ~~IC 36-5-2-6.5(2) through~~ IC 36-5-2-6.5(3) that results in a
vacancy on the town council. The town council may set a meeting for
making the determination on its own motion, or a person may petition
the town council to set a meeting to make the determination. The town
council may grant or deny a petition for a meeting.

(b) If a person files a petition with the council, the petition must
state the basis for the person's claim that a circumstance has occurred
under ~~IC 36-5-2-6.5(2) through~~ IC 36-5-2-6.5(3).

SECTION 27. IC 5-8-5-4 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2005]: Sec. 4. (a) If the town council is
reasonably satisfied that any circumstance has occurred under
~~IC 36-5-2-6.5(2) through~~ IC 36-5-2-6.5(3), the council may, by an
affirmative vote of a majority of the members appointed to the body,
vote to declare a vacancy in the town council membership. The
member who is alleged to have vacated the member's seat may
participate in the meeting as a member, but may not vote on the issue.

(b) If the member who is the subject of the petition or motion does
not attend the meeting at which the town council makes the
determination that a vacancy exists, the town council shall mail notice
of its determination to the member.

(c) If the town council determines that a vacancy exists, the town
clerk-treasurer shall give the circuit court clerk notice of the
determination not later than five (5) days after the date of the town
council's determination. The circuit court clerk shall give notice to the
county chairman if a caucus is required under IC 3-13-11 to fill the
vacancy.

SECTION 28. IC 5-8-6 IS ADDED TO THE INDIANA CODE AS
A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
1, 2005]:

Chapter 6. Notice of Death of an Officeholder

Sec. 1. This chapter applies when a vacancy must be filled

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under:

- (1) IC 3-13-4;
- (2) IC 3-13-5;
- (3) IC 3-13-6;
- (4) IC 3-13-7;
- (5) IC 3-13-8;
- (6) IC 3-13-9;
- (7) IC 3-13-10; or
- (8) IC 3-13-11;

due to the death of an officeholder.

Sec. 2. As used in this chapter, "officeholder" refers to a person who holds a state office, legislative office, local office, or school board office (as those terms are defined in IC 3-5-2).

Sec. 3. (a) A person who knows of the death of an officeholder may certify the death to the following:

(1) The governor, in the case of the death of any of the following:

(A) An individual who holds a state office (as defined in IC 3-5-2-48).

(B) An individual who is a judge of a circuit, superior, probate, county, or city court.

(2) The secretary of state, in the case of the death of an individual who holds a legislative office (as defined in IC-3-5-2-28).

(3) The circuit court clerk of the county in which the officeholder resided, in the case of the death of an officeholder of a county, city, town, township, or school corporation not covered under subdivision (1).

(b) A person who certifies the death of an officeholder shall:

(1) state the information that causes the person to believe the officeholder has died; and

(2) certify, under the penalties for perjury, that to the best of the person's knowledge and belief, the information stated is true.

Sec. 4. When the governor:

(1) obtains information concerning the death of an individual who:

(A) holds a state office (as defined in IC 3-5-2-48); or

(B) is a judge of a circuit, superior, probate, county, or city court; and

(2) is reasonably satisfied that the information described in subdivision (1) is true;

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the governor shall fill the vacancy as provided by law.

Sec. 5. (a) When the secretary of state:

- (1) obtains information concerning the death of an individual who holds a legislative office (as defined in IC 3-5-2-28); and
- (2) is reasonably satisfied that the information described in subdivision (1) is true;

the secretary of state shall give notice of the death to the state chairman of the political party that elected or selected the deceased individual.

(b) The secretary of state shall give the notice required by subsection (a) not later than seventy-two (72) hours after the requirements of subsection (a)(1) and (a)(2) are satisfied.

Sec. 6. (a) When a circuit court clerk:

- (1) obtains information concerning the death of an officeholder of a county, city, town, township, or school corporation not subject to section 4 of this chapter; and
- (2) is reasonably satisfied that the information described in subdivision (1) is true;

the circuit court clerk shall give notice of the death to the person described in subsection (b).

(b) The circuit court clerk shall give the notice required by subsection (a) to:

- (1) the person who must give notice of any meeting or caucus required to fill the vacancy caused by the death; or
- (2) if a meeting or caucus is not required to fill the vacancy, the person who has the power to fill the vacancy.

(c) The circuit court clerk shall give the notice required by subsection (a) not later than seventy-two (72) hours after the requirements of subsection (a)(1) and (a)(2) are satisfied.

SECTION 29. IC 20-3-11-3.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3.1. (a) The board of school commissioners consists of seven (7) members. Each member shall be elected on a nonpartisan basis in primary elections held in the county as specified in this section. Five (5) of the members shall be elected from the school board districts in which they reside and two (2) members shall be elected at large. Not more than two (2) of the members who serve on the board may reside in the same school board district. When a candidate runs for one (1) of the district positions on the board, only eligible voters residing in the candidate's district may vote for that candidate. When a person is a candidate for one (1) of the at-large positions, eligible voters from all the districts may vote for that candidate. When a candidate files to run for a position on the board, the

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1 candidate must specify whether the candidate is running for a district
 2 or an at-large position. All members elected to the board serve four (4)
 3 year terms. A candidate who runs for a district or an at-large position
 4 wins if the candidate receives the greatest number of votes of all the
 5 candidates against whom the candidate runs. Districts shall be
 6 established within the school corporation by the state board of
 7 education. The districts shall be drawn on the basis of precinct lines
 8 and as nearly as practicable, of equal population with the population of
 9 the largest not to exceed the population of the smallest by more than
 10 five percent (5%). District lines must not cross precinct lines. The state
 11 board of education shall establish balloting procedures for the election
 12 under IC 3 and other procedures required to implement this section.

13 (b) Each member of the board of school commissioners serves under
 14 section 2 of this chapter. **In accordance with subsection (e),** the
 15 vacancies in the board of school commissioners shall be filled
 16 temporarily by the school board as soon as practicable after the
 17 vacancy occurs. The member chosen by the board to fill a vacancy
 18 holds office until the member's successor is elected and qualified. The
 19 successor shall be elected at the next regular school board election
 20 occurring after the date on which the vacancy occurs, at which time the
 21 vacancy shall be filled for the remainder of the term.

22 (c) Persons elected to serve on the board begin their terms on July
 23 1 of the year of their election.

24 (d) Notwithstanding any law to the contrary, voters shall cast their
 25 votes for school board candidates by voting system or paper ballot.
 26 However, the same method used to cast votes for all other offices for
 27 which candidates have qualified to be on the election ballot must be
 28 used for the school board offices.

29 **(e) If a vacancy in the board of school commissioners exists**
 30 **because of the death of a board member, the remaining members**
 31 **of the board shall meet and select an individual to fill the vacancy**
 32 **in accordance with subsection (b) after the secretary of the board**
 33 **receives notice of the death under IC 5-8-6.**

34 SECTION 30. IC 20-5-3-3.5 IS ADDED TO THE INDIANA CODE
 35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 36 1, 2005]: **Sec. 3.5. (a) This section applies to a school corporation**
 37 **subject to section 3 of this chapter.**

38 **(b) The definitions in IC 3-5-2 apply to this section.**

39 **(c) If a vacancy in a school board office exists because of the**
 40 **death of a school board member, the remaining members of the**
 41 **governing body shall meet and select an individual to fill the**
 42 **vacancy after the secretary of the governing body receives notice**

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1 of the death under IC 5-8-6 and in accordance with section 3 of this
2 chapter.

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SENATE MOTION

Madam President: I move that Senator Steele be added as coauthor of Senate Bill 179.

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COMMITTEE REPORT

Madam President: The Senate Committee on Elections and Civic Affairs, to which was referred Senate Bill No. 179, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 179 as introduced.)

LAWSON C, Chairperson

Committee Vote: Yeas 9, Nays 0.

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